U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TX Date: MAR 04 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §-1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director

DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The district director determined that there was no waiver available to the applicant for a crime involving moral turpitude and denied the application accordingly. *See* Decision of the District Director, dated November 28, 2001.

On appeal, counsel states that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in finding that there is no waiver available for the crime committed by the applicant under section 212(a)(2)(A)(i). Counsel asserts that the applicant is eligible for a waiver pursuant to section 212(h) of the Act. Further, counsel contends that the CIS decision is not specific enough and does not provide the applicant with a clear reason for the denial.

In support of these assertions, counsel provides copies of court documents relating to the applicant's criminal record; a copy of the marriage certificate for the applicant and his spouse; a copy of the naturalization certificate of the applicant's spouse; copies of the U.S. birth certificates of the applicant's children; copies of income tax documents filed by the applicant and his spouse and financial documents for the couple. The record also contains a copy of the Sierra Leonean birth certificate of a child of the applicant born from a previous relationship. The entire record was considered in rendering a decision on the appeal.

The record reflects that on October 31, 1995, the applicant was convicted of Use of Counterfeit Access Device and Aiding and Abetting in violation of 18 U.S.C. § 1029(a)(1) and (2).

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
> . . . .
>
> > (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the

> Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The AAO finds that the district director erred in determining that the applicant was ineligible for a waiver of inadmissibility owing to his criminal conviction. The AAO finds that the applicant, as the spouse and parent of U.S. citizens, is prima facie eligible for consideration of a waiver pursuant to section 212(h) of the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant is married to a United States citizen and has been approved for an immigrant visa. Counsel further contends that the applicant has three U.S. citizen children and that he and his wife are in the process of purchasing a home. *See* Supporting Brief, undated. However, counsel makes no assertions regarding extreme hardship imposed on the applicant's spouse and children as a result of the applicant's inadmissibility to the United States. The record makes no assertions related to the factors identified in *Matter of Cervantes-Gonzalez* regarding the ability of the applicant's spouse and children to relocate to Nigeria in order to remain with the applicant. The record does not reveal whether or not the applicant's spouse has family ties outside of the United States and it does not establish that the applicant's spouse or children suffer from any significant conditions of health for which suitable care is not available in Nigeria. Further, the record does not establish financial hardship to the applicant's qualifying relatives if the applicant is required to depart from the United States.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's wife and children will endure hardship as a result of separation from the

applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or children caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.